

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 5418
Chris Kouri for Congress Committee)
and Kinde Durkee, as treasurer)

GENERAL COUNSEL'S REPORT¹

I. ACTIONS RECOMMENDED

Take no further action and close the file with respect to the Chris Kouri for Congress Committee and Kinde Durkee, as treasurer.²

II. BACKGROUND

On August 25, 2003, in MUR 5328, the Commission found reason to believe that the Chris Kouri for Congress Committee ("Kouri Committee") and its treasurer violated 2 U.S.C. § 441a(f) by accepting contributions in 2002 from two affiliated multicandidate committees, Team Majority and PAC to the Future, that exceeded the Act's contribution limits.³ At the same time, the Commission authorized pre-probable cause conciliation with the Kouri Committee and most of the other respondents.⁴ On February 24, 2004, the Commission closed MUR 5328, severing the Kouri Committee and another candidate committee (Committee to Elect Charles Walker) into new MUR 5418. In a Memorandum to the Commission dated May 11, 2004, this Office recommended

¹ Although this is the first General Counsel's Report in this matter (activated February 24, 2004), it has been styled as a follow-up report because the Commission's reason-to-believe findings were made in connection with the original matter, MUR 5328 (PAC to the Future/Team Majority)

² Kinde Durkee became the Kouri Committee's treasurer after the Commission made its reason-to-believe findings

³ The Kouri Committee is one of five candidate committees that the Commission found reason to believe violated 2 U.S.C. 441a(f) by accepting excessive contributions from Team Majority and PAC to the Future, which served as "leadership" PACs associated with Rep. Nancy Pelosi

⁴ The Commission reached pre-probable cause settlements with Team Majority, PAC to the Future and three candidate committees.

2004 OCT 20 4:13

COMMISSION SECRETARIAT

2504114832

1 that the Commission approve limited formal discovery to establish when the Kouri Committee first
2 obtained knowledge that Team Majority and PAC to the Future were affiliated. The Commission
3 authorized such discovery on May 12, 2004. Based on our review of the available evidence, we
4 believe there is insufficient evidence to pursue the Kouri Committee.

5 **III. DISCUSSION**

6 The Kouri Committee has steadfastly maintained that it did not become aware that Team
7 Majority and PAC to the Future were affiliated – and hence that the \$5,000 contributed by each
8 PAC should be aggregated and subject to a common limit under 2 U.S.C. 441a(a)(2)(A) – until it
9 received the Commission's September 4, 2003 reason-to-believe letter. The Kouri Committee
10 disgorged the \$5,000 excessive contribution on October 16, 2003, asserting that such action
11 complied with the 60-day requirement for making timely refunds of excessive contributions
12 pursuant to 11 C.F.R. § 103.3(b)(3).⁵

13 Pursuant to section 441a(f) of the Act, no political committee "shall knowingly accept"
14 any contribution in violation of the provisions of section 441a. The Commission's regulations
15 provide that committee treasurers shall use "best efforts" to determine the legality of the
16 contributions that present "genuine questions" as to whether they were received from prohibited
17 sources. *See* 11 C.F.R. § 103.3(b)(1). The regulations also set forth limited options (e.g.,
18 redesignations and refunds) available to committees concerning contributions "which on their
19 face" exceed the Act's limits and contributions "which do not appear to be excessive on their
20 face," but which exceed the Act's limits "when aggregated with other contributions from the
21 same contributor." *See* 11 C.F.R. § 103.3(b)(3).

⁵ The Kouri Committee disgorged the excessive contribution to the U S Treasury

25044114854

1 Regarding the Kouri Committee's internal procedures, it appears that incoming
2 contribution checks were photocopied and the amounts and sources were entered into a
3 computerized bookkeeping system. According to sworn declarations submitted by Kouri
4 Committee staff, the computer files were searched to determine whether an individual or PAC
5 had made a previous contribution. If the aggregate limit for a single contributor exceeded the
6 Act's limits, the Kouri Committee would either return the check or seek reattribution or
7 redesignation.

8 PAC to the Future's \$5,000 contribution to the Kouri Committee was made on
9 September 27, 2002, followed by Team Majority's \$5,000 contribution on October 22, 2002.
10 During the period in question, Team Majority and PAC to the Future maintained separate
11 addresses and did not list each other as affiliated committees in their Statements of Organization.
12 There is no evidence that the contribution checks or accompanying correspondence
13 acknowledged that the committees were affiliated. Four persons with the Kouri Committee – the
14 candidate, the treasurer during the period in question, the current treasurer (who prepared FEC
15 reports for the Kouri Committee at that time) and the finance director – each stated in their
16 declarations that "there was nothing of which I was aware to indicate that [Team Majority and
17 PAC to the Future] were in any way connected."⁶

18 The evidence suggesting that the Kouri Committee received earlier knowledge is derived
19 mainly from two documents obtained during our investigation in closed MUR 5328. First, a call
20 log spreadsheet created by Brian Wolff⁷ of Team Majority identified over forty candidate

⁶ In addition, because the Kouri Committee was internally generated, it did not receive notice of the complaint in MUR 5328.

⁷ Mr. Wolff reportedly served as "the chief fundraiser for House Minority Leader Nancy Pelosi." See Chris Cilizza, *DCCC, DSCC Finish Filling Top Staff Positions*, ROLL CALL (Feb. 26, 2003)

1 committees that had received excessive contributions. The call log appeared to indicate that
2 Mr. Wolff attempted to call each of these committees, including the Kouri Committee, on
3 October 25, 2002, shortly after the contributions were made. Second, we obtained copies of
4 follow-up letters mailed to several campaigns, including the Kouri Committee, requesting that
5 the \$5,000 excessive contributions be refunded. If the Kouri Committee had received either of
6 these communications, it could have presumably returned the excessive contribution to Team
7 Majority in a timely manner. Further investigation, however, has uncovered additional
8 information that appears to undercut the evidentiary value of these two documents.

9 The Kouri Committee, to support its claim that it had no knowledge of the campaign
10 phone number listed in Team Majority's call log, submitted campaign phone records showing a
11 different number bearing no similarity to the call log number. Staff interviewed Kouri finance
12 director Martha Elder, who was identified in the call log as the contact person for the campaign.
13 Ms. Elder verified the number in the phone records submitted by the campaign, but claimed she
14 did not recognize the phone number listed in Team Majority's call log. She stated that she did
15 not know Brian Wolff of Team Majority and did not have any conversation with anybody from
16 Team Majority or PAC to the Future. She stated that she believes she would have remembered a
17 discussion of a refund request and responded accordingly.

18 The Commission subpoenaed BellSouth to learn the identity of the subscriber to the
19 phone number in the call log. BellSouth responded that the number in question was not in
20 service in 2002. BellSouth also provided numbers for the main campaign staff, none of which
21 bore any resemblance to the call log number. We then interviewed Brian Wolff of Team
22 Majority, who confirmed that he created the log to keep track of refund requests, but did not
23 specifically remember talking to Ms. Elder or anyone from the Kouri Committee. When

20250411 14:53

1 questioned about the number, he stated that he may have gotten it from a Democratic
2 Congressional Campaign Committee contact list, but he acknowledged that it may have been a
3 wrong number.

4 Regarding the follow-up letter sent by Team Majority, although it appears that such a
5 letter was sent using Federal Express, the evidence suggests that the letter was probably not
6 received by the Kouri Committee. The letter was sent to a temporary campaign address, rather
7 than the permanent address listed in the Kouri Committee's Statement of Organization and on
8 the FEC website. At the time it was sent, however, the Kouri Committee had already vacated the
9 office space at the address in question. We have obtained a Federal Express invoice stating that
10 an attempt was made to deliver the letter but that it was returned as "Undeliverable." There is no
11 evidence that the letter was resent by Team Majority to the correct address or that the Kouri
12 Committee otherwise received it. In our interview with Kouri finance director Martha Elder, she
13 stated that she believes she would have remembered such a letter if the campaign had received it.

14 At this juncture, we believe that additional investigation is unlikely to further illuminate
15 whether the Kouri Committee knew or should have known, prior to the Commission's reason-to-
16 believe findings, that Team Majority was affiliated with PAC to the Future. Accordingly, we
17 recommend that the Commission exercise its prosecutorial discretion and take no further action
18 and close the file with respect to the Chris Kouri for Congress Committee and Kinde Durkee, as
19 treasurer.⁸

20

⁸ Unlike the Kouri Committee, the remaining respondents – the Committee to Elect Charles Walker and its treasurer – have not refunded or disgorged any portion of the excessive contribution. Also, unlike the Kouri Committee, we have evidence that they received refund requests from Team Majority in 2002, shortly after receiving the excessive contribution.

IV. RECOMMENDATIONS

1. Take no further action and close the file with respect to the Chris Kouri for Congress Committee and Kinde Durkee, as treasurer.
2. Approve the appropriate letter.

Lawrence H. Norton
General Counsel

Date

10/19/04

BY:

Rhonda J. Vosdigh by LLC
Rhonda J. Vosdigh
Associate General Counsel
for Enforcement

Sidney Roche
Sidney Roche
Assistant General Counsel

Thomas J. Andersen
Thomas J. Andersen
Attorney

25044114858